

sovereign powers not constituting an appropriation of plaintiff's property for public use."

It was noted the *Sea Boy* went back to San Pedro with her hold one-third full and the pounding of the sea caused the fish to break apart, ruining 12 tons of fish and the *Santa Margarita* would have incurred the same or greater loss had she not left with a full load.

The petition was dismissed on February 8, 1955.

The Panama Canal Zone and Central America generally was a hotbed of political intrigue and espionage in December 1941. Pro-German factions were everywhere and most Central American governments didn't know who was going to win the war and thus hesitated to offend anyone. The foreign trade of Guatemala was financed almost exclusively by German bankers.

The *Erie* went to Cristobal on the Atlantic side of the Canal on June 9, 1942. The next day she rescued 46 survivors from a torpedoed merchant vessel and on the 16th she took aboard

26 survivors in lifeboats from the Ore Steamship Corporation steamer *Lebore* and rescued 28 more from St. Andrew's Island. She then took up convoy escort work. On November 10, 1942 she left Port-of-Spain, Trinidad for Guantanamo Bay, Cuba via Curaçao. Two days out of Curacao on the 12th she was torpedoed by *U-163*. The gunboat exploded in flame and was abandoned. Seven sailors were lost and 11 wounded out of her crew of 243. Survivors were picked up by the Netherlands gunnery training ship *HMNS Van Kinsbergen*.

Four days later firefighters went aboard the *Erie* and the next day another group from Norfolk, Virginia arrived with special equipment. The fires were extinguished and the gunboat towed into Willemstad Harbor, Curaçao for repairs. She capsized and sank on December 5 during the salvage and cleanup effort.

In March 1944 Captain Mack was the co-commander of Transport Division 42 during the Okinawa invasion.

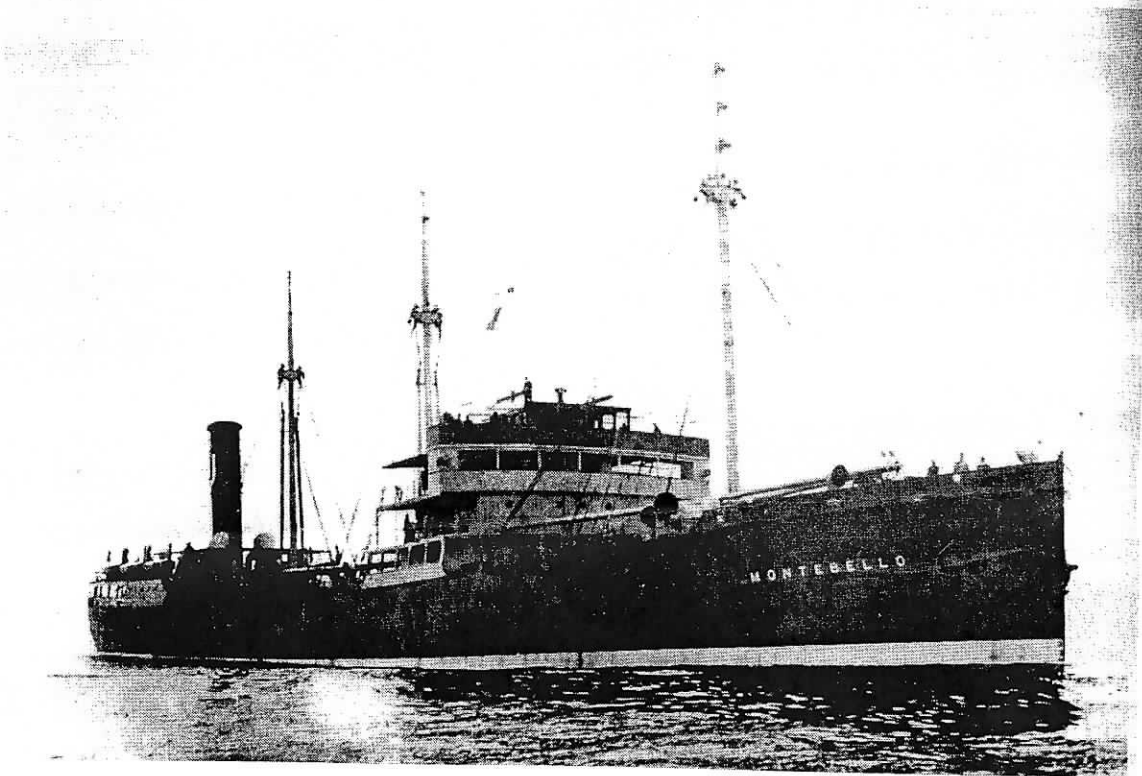
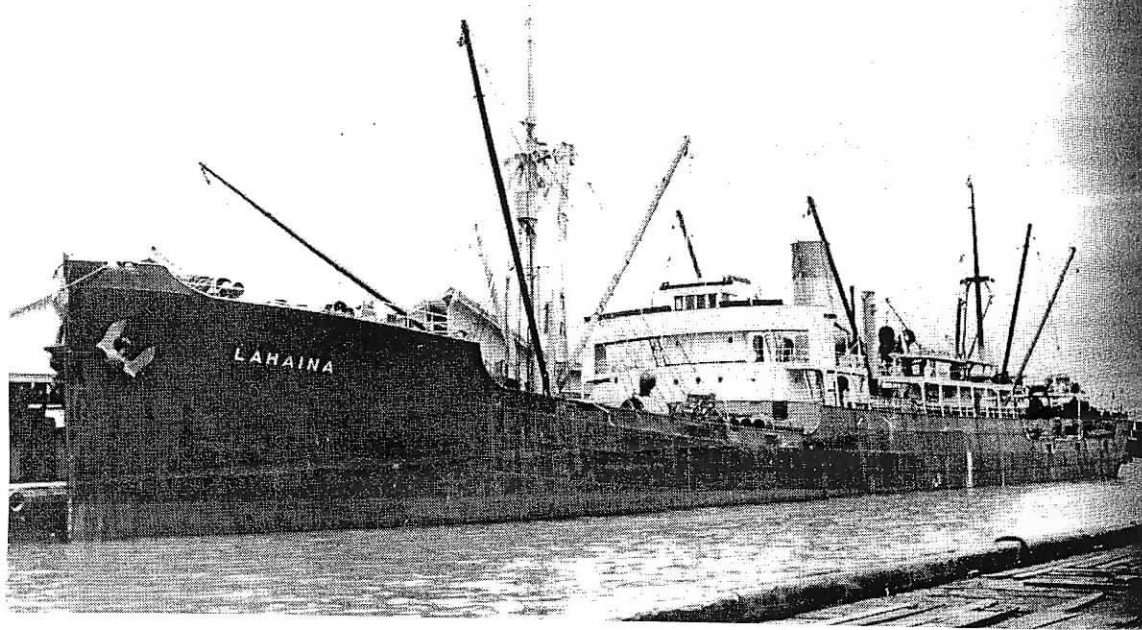
The *Lahaina* and the *Montebello*

Matson Navigation Company's steamer *Lahaina* under Captain Hans Matthiesen was in Hawaii loading a cargo of molasses and scrap iron for San Francisco in November 1941. On the 26th the U. S. Maritime Commission notified the company the ship would be required to depart San Francisco on the 18th of December for a voyage to Vladivostok, Russia. Matson ordered Captain Matthiesen to leave Ahukini, Kauai, Hawaii on December 4. When Pearl Harbor was attacked on the 7th the 14th Naval District commandant ordered the ship into the nearest U. S. or friendly port so Matthiesen headed back to the Territory of Hawaii at top speed but the next day she was ordered by the Commandant of the 12th Naval District to proceed to Point Concepcion, California. Captain Matthiesen turned about and got the crew busy repainting the ship with a mixture of whatever paint they had to produce a finish that didn't stand out. Matson's funnels were a bright yellow with blue tops.

On the early afternoon of December 11 she

was about 700 miles east of Hawaii at 27°35'N/147°25'W when she was shelled without warning, set afire, and sunk by the Japanese submarine *I-9*. All 34 crewmen got into one 17-person capacity lifeboat. Four died before the boat reached Spreckelsville near Kahului, Maui under sail nine days later.

Matson had \$800,000 of marine risk insurance but no war risk insurance on the ship although they had applied to private carriers and to the Maritime Commission for war risk insurance prior to the Murmansk voyage, the first such application after Pearl Harbor. The Maritime Commission told Matson they could not furnish that type of insurance unless it was unavailable on the open market under reasonable terms and conditions and they had not as yet determined that to their satisfaction. On December 8 the Maritime Commission's Division of Insurance determined war risk insurance was not available on reasonable terms and conditions and recommended the insurance be issued. This was approved on the 11th and the



Top: Matson's 5,645 gross ton, 21-year-old *Lahaina* before the war. Matson funnel's were bright yellow with a wide blue band around the top. *Bottom:* Union Oil's 8,272 gross ton tank ship *Montebello* built in 1921 at Los Angeles, California. Both photographs courtesy of Bill Hultgren.

company was issued a policy the same day but the policy did not become effective until December 20. Matson had found war risk insurance in London on the 15th for 12 of its vessels but cancelled it effective the 20th when the Maritime Commission policy became effective.

Matson filed a claim on the 29th with the War Damage Corporation claiming they were entitled to recover under Section 5(g) of the Reconstruction Finance Corporation Act. This claim was denied on the ground the ship was not in transit within the meaning of the Act. Matson filed suit in U. S. District Court where the decision of the Reconstruction Finance Corporation was upheld. An appeal produced similar results and the Supreme Court denied a writ of certiorari. Matson then appealed to Congress who referred the claim to the federal Court of Claims.

Union Oil Company of California's tanker *Montebello* arrived at San Luis, California on December 20, 1941. San Luis was a port or roadstead open to the sea. Union Oil was aware that other ships had been attacked on the West Coast. The company consulted the Navy about a trip to Canada they were planning and were told they did not need the Navy's permission to sail but to follow a course as close to shore as possible. The tanker was cleared by customs for a non-stop voyage to the company's subsidiary at Vancouver, British Columbia. She left Avila, California on the 23rd at 1 a.m. with a load of crude oil under blackout conditions, observed radio silence, and she was painted gray. At 5:40 a.m. the ship was shelled and torpedoed by the Japanese submarine *I-21* between 3 and 5½ miles offshore over the continental shelf. The submarine's commander ordered the lifeboats machine-gunned but none of her 38 crewmen were hit and all survivors were picked up. The ship sunk about an hour after being attacked.

The day before the ship sailed Union Oil had obtained commercial war-risk insurance on seven of its ships including the *Montebello* but coverage did not become effective until 1 p.m. on December 23. The ship was under the control of Union Oil at all times.

Union Oil filed a claim with the War Insurance Corporation, the successor to the War

Damage Corporation, on January 15, 1942 in the amount of \$1,001,031 for the ship and her cargo but the claim was denied.

Union Oil sued in U. S. District Court on September 20, 1946 to recover on the ground that free insurance should have been available since the ship was sunk at a place "determined by the President to be under the dominion and control of the United States" pursuant to Proclamation 2667 dealing with the continental shelf. The stipulated value of the ship, cargo, and stores was \$1,001,431.72. The sole issue presented to the jury was whether or not the ship was within three miles of shore when it was sunk. The jury decided the ship was sunk beyond the 3-mile limit and the suit was dismissed. Union Oil did not appeal and was unable to explain why the ship sailed prior to the war-risk policy becoming effective.

Union Oil and Matson both filed suit in the federal Court of Claims in Washington and their cases were heard together since both involved questions of war risk insurance.

Between December 7 and 31 Maritime Commission war risk insurance was not available and many owners elected to self-insure their vessels. Commercial policies were available but at very high premiums. The court held that the cost of the losses should not be charged to the United States. The Maritime Commission announced on December 30 that war risk insurance was available through them.

The court conceded the *Montebello* was over the continental shelf when sunk but held that Proclamation 2667 of September 28, 1945 titled "Policy of the United States with respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf" did not cover the sinking of the tanker. The proclamation stated:

"The character as high seas of the waters above the continental shelf and the right to free and unimpeded navigation are in no way thus affected."

The court held both companies should have, and could have, obtained commercial war risk insurance prior to sailing. The companies pleaded a moral responsibility on the part of the government but the court stated, in part:

"We see no reason to shift this loss to the

United States. Commercial war-risk insurance was obtained by Matson on its other vessels and cancelled when Maritime [Commission] insurance became available. War inevitably produces hardships, suffering, and losses. Allocation and priority orders were issued that had devastating effects on many businesses. Many wartime regulations were imposed that resulted in unfair treatment. Many persons were called upon to make sacrifices during this period. We find no moral obligation on the part of the United States to reimburse these plaintiffs for their losses, which could have been prevented, than we do for the persons referred to above.

"The actions of the Navy with respect to the *Lahaina* do not give rise to any moral respon-

sibility on the part of the United States. The *Lahaina* would still have been hundreds of miles off shore even if she had received no orders from the Navy. Whether she would have been sunk is questionable.

"The times of sailing and the course of the *Montebello* were under the complete control and discretion of Union. Why the *Montebello* did not wait one day before sailing to see if she had insurance is not explained.

"If Congress should choose to grant relief to the Matson Navigation Company for the loss of the *Lahaina* or the Union Oil Company of California for the loss of the *Montebello* and her cargo, it would be a gratuity."

The *Monadnock* and the *Sarangani*

The Navy's old 262 x 55 foot Asiatic Station monitor *Monadnock* built in 1896 was decommissioned on March 24, 1919. The hull was sold to Edward J. Neil & Company of Manila for \$10,250 on August 24, 1923 and Neil sold it to Visayan Stevedore Transportation Co. after everything of value had been stripped out of it at a cost of \$1,500. Compania Maritima was a Philippine shipping company that operated 14 steamers around the Islands. On April 18, 1929 the company purchased the hull from Visayan Stevedore for 40,000 pesos (\$20,000) for use as a floating fuel oil storage tank.

The company also purchased the Navy tanker USS *Sara Thompson* (AO-8), the ex-German tanker *Gut Heil*, on August 9, 1934 for \$11,075.50 for the same purpose. After service in World War I she was placed in reduced commission in 1921 and had been used as a floating diesel and fuel oil storage tank. The hull was 321 feet long and 40 feet in breadth. The company drydocked the hull in 1937 or '38, replaced bottom plates, and renamed the vessel *Sarangani*. The *Monadnock* held 2,500 to 2,900 tons of fuel and the *Sarangani* held about 4,000 tons. These new tanks, plus the shore-side tanks holding 3,400 tons, enabled the company to purchase more fuel in bulk at a savings of \$2.50 per ton on their 40,000 annual usage. This was offset somewhat by necessary

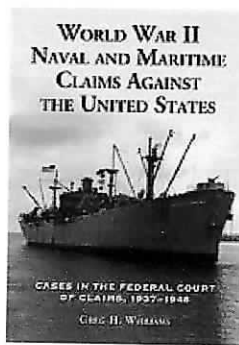
maintenance costs and by having to lighter the fuel oil to the company's piers at the mouth of the Pasig River.

On October 11, 1940 the company rented the *Monadnock* to the Navy from the 12th through June 30, 1941 at \$5,000 a month with the stipulation that the company could store 1,500 tons of its fuel in Navy storage tanks on shore during the first two weeks of January 1941 and if they were unable to find alternate storage facilities by April 1941 they would get another two weeks extension.

War came and by the middle of December 1941 the Army had taken most of the company's vessels but even if they still had them the Japanese invasion would have precluded normal operations.

On December 21, 1941 Rear Admiral Francis W. Rockwell requisitioned the *Monadnock* and *Sarangani*. The *Monadnock* was anchored just inside the Manila Bay breakwater on the north side of the south harbor. The *Sarangani* was inside the breakwater opposite Pier 5. The company was directed to turn the vessels over to the Naval Overseas Transportation Service port director but apparently no action was taken on this and the Navy never actually used the vessels.

On the 24th General MacArthur declared Manila an open city and ordered U. S. forces



World War II naval and maritime claims against the United States : cases in the federal Court of Claims, 1937-1948

Author: [Greg H Williams](#)

Publisher: Jefferson, N.C. : McFarland & Co., ©2006.

Edition/Format: Book : English [View all editions and formats](#)

Summary: "Maritime-related claims against United States government from World War II. Presented chronologically. Each was filed in a United States district court then petitioned to Congress or filed with Court of Claims in Washington, D.C. Appeals are mentioned only if lower court decision was reversed. Appendices contain a glossary and a list of pertinent acts of Congress"--Provided by publisher.
